



LEO BURNETT COMPANY, INC.

July 29, 1992

David Rees Davies, Esq.  
Associate General Counsel  
Philip Morris Incorporated  
120 Park Avenue  
New York, NY 10017-5592

*cc: [Signature]*

Re: Wayne McLaren

Dear David:

Pursuant to our conversation, we have attached the documentation we have now found regarding Mr. McLaren. He and three other models were hired in 1984 to appear in a photograph used in point-of-sale materials for a Marlboro Poker Cards promotion. Despite past searches, we were finally able to locate records naming Mr. McLaren based on the allegations made by Robert Kenneally of Associated Talent. In Mr. Kenneally's affidavit, which we just received on Friday afternoon (July 24), he alleged that payment to Associated Talent was made for Mr. McLaren's services specifically in December, 1984.

As you know, Mr. McLaren originally claimed that he was a "Marlboro Man" appearing in Marlboro advertising in 1975, or the mid-1970's (see the Wall Street Journal article of September 26, 1991 and the Chicago Sun-Times article of September 27, 1991). In February, 1992, Philip Morris asked whether we had records to support Wayne McLaren's allegations. Unfortunately, due to our file retention policy, our Print Service and Finance Departments no longer have financial or talent records on file from 1970 through 1980. Because these records were destroyed pursuant to our file retention policy, to check Mr. McLaren's allegations, we visually reviewed all Marlboro print advertising from 1970 to 1980 to try to identify him. We did not find any print advertising in which Mr. McLaren appeared. In addition, we asked our Broadcast Business Department to check whether payment had been made to Mr. McLaren for any television advertising (such as an international commercials) during that period. Broadcast Business did not locate any such record of payment to Wayne McLaren. The records searched, however, only contained information on principal performers, such as a "Marlboro Man", there are not complete talent records on talent that may have only worked as an extra.

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To further check Mr. McLaren's accusations, we also talked to individuals working on the account for any personal knowledge and memory regarding the use of McLaren as a "Marlboro Man". We questioned the Senior Creatives on the Marlboro account whose combined experience on Marlboro spans almost forty-five years. Due to their extensive knowledge and experience with Marlboro advertising we thought it would be prudent to check whether they recalled Mr. McLaren's name and/or likeness. Since these Creatives worked with the models who have appeared in Marlboro advertising, it was likely they would recognize Mr. McLaren if he had been "The Marlboro Man". They did not recall his name or likeness.

As a further check, we also spoke to our veteran cowboys who have been Marlboro models for more than twenty years asking if they remembered a Wayne McLaren. They had no recollection of him either.

After the original accusations, Mr. McLaren's representatives claimed later that McLaren was the cowboy shown in the Marlboro ad which appeared in the May, 1981 issue of Playboy. After obtaining a copy of that issue from Playboy Magazine, we found the ad in question. We then correctly identified the cowboy who appeared in the specific Marlboro ad referenced in that issue as one of our regular Marlboro cowboys.

In April, 1992, we were advised that the name "Associated Talent" was allegedly connected with Mr. McLaren. We could not search payment records involving Associated Talent for the pertinent years because as we have said, due to our normal record retention policy, there were no longer any financial records for the period Mr. McLaren claimed to have appeared in advertising as "The Marlboro Man". However, we asked our seasoned Marlboro Creatives whether anyone could recall using the Associated Talent Agency. None of the Creatives or Print Production people we spoke to recalled the agency. In fact, it is important to note that it is very unusual for any talent agency to have been used to hire any models for Marlboro at all. We now know it was done on this one occasion, however, because the artwork to be produced was for a special promotion, and did not incorporate the traditional Marlboro cowboy image. The photographer hired to produce the Marlboro Texas Poker Playing Cards promotional pieces, James Wood, had never been used as a Marlboro photographer prior to this shoot. He was hired as a special photographer to produce a "sepia-toned" photograph to make the photograph of the old time western poker players appear as if it was a historical one.

For the promotional artwork, the photographer, James Wood, was responsible for finding and hiring the models. Mr. Wood, not Burnett, hired Associated Talent to provide the models. The Art

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Director who worked with Mr. Wood at the shoot, personally does not recall ever having any direct communications with Associated Talent. Therefore, it is probable that when first asked no one remembered Associated Talent because it was the photographer who worked with Associated Talent for this special promotion and it was unusual to work with a talent agency at all.

We first saw the Associated Talent's affidavit last Friday afternoon. It was then that we learned of the new allegation - i.e., that we made payment to that agency in December, 1984, for a shoot held in October, 1984. Given this new detailed information and new claim, we again searched the pertinent records - this time searching for payment made to a Wayne McLaren or to Associated Talent on or about those new dates.

Although there were at least seven mainline Marlboro advertising shoots conducted during the months of September through December, 1984, none were with Mr. Wood. Based upon the allegations in the Associated Talent affidavit, we searched financial records looking for a check payable to Associated Talent, this time during the months October, November, December, 1984, or in the year 1985. We found a check issued in January, 1985 making payment in the amount of Seven Hundred Fifty Dollars (\$750) referencing a shoot by a photographer James Wood. The check was payable to Associated Talent and referenced another model, not Mr. McLaren. However, given the information that we used a James Wood as a photographer in a Marlboro shoot, we then questioned Marlboro Creatives (again) about Mr. McLaren and about any shoot taken by a photographer James Wood. It was with the mention of the name James Wood that an Art Director did recall a promotional shoot conducted in October, 1984 done for Marlboro promotional materials (not Marlboro mainline advertising). There was no personal recollection of Wayne McLaren's name because the Art Director never personally knew the names of the models used for that promotional shoot. We were able to locate the file from that promotional shoot, containing the releases, one of which was signed by Mr. McLaren. Mr. McLaren was paid a total of Seven Hundred Fifty Dollars (\$750) less his agency commission for work done for this shoot. Mr. McLaren was hired through Associated Talent and we then found a check payable to Associated Talent referencing the shoot and payment made to Mr. McLaren.

Based on this new information, we then found a copy of the trade brochure produced for the promotion which used the photograph taken at the Wood shoot. Due to the "sepia-toned" photography used to make the photograph appear very old, however, it is difficult to identify which of the four men is Mr. McLaren.

For your information, only point-of-sale materials were produced, no magazine or outdoor advertising was produced for this promotion. This was a one time promotion which was probably on-shelf for about three months.

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Attached, for your files, is the following:

1. Wayne McLaren's release for use of his likeness in the Marlboro Texas Poker Card promotional materials;
2. A check payable to Associated Talent for the services of Wayne McLaren;
3. A copy of the first page of the trade brochure for the Marlboro Poker Cards promotion, on which the photograph appears.

Our complete financial payment records in existence, print production talent records, and television talent residual records for principal performers have now been searched for the years 1981 through 1991. We did not find any other documentation evidencing the use of Wayne McLaren's services in the production of Marlboro advertising.

Please call if you need any additional information.

Sincerely,

LEO BURNETT COMPANY, INC.

*Kathleen A. Ring*  
Kathleen A. Ring  
Attorney

/jmk  
Attachments

cc: Carla Michelotti, Esq. - Leo Burnett Company, Inc.

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